@ BELLSOUTH

RECEIVED

BellSouth Telecommunications, Inc. 333 Commerce Street Suite 2101 Nashville, TN 37201-3300 2003 APR 15 AM 9: 22Guy M. Hicks General Counsel

guy.hicks@bellsouth.com

April 15, 2003 OCKET ROUN 5 214 6301

VIA HAND DELIVERY

Hon. Sara Kyle, Chairman Tennessee Regulatory Authority 460 James Robertson Parkway Nashville, TN 37238

> Re: MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. Complaint Against BellSouth for Overcharging for High Capacity Circuits

Docket No. 03-00145

Dear Chairman Kyle:

Enclosed please find an original and fourteen copies of the Answer of BellSouth Telecommunications, Inc. in the above-listed docket. Due to ongoing litigation between the parties in other forums, a brief explanation follows.

BellSouth previously filed in this docket a Unopposed Motion for Extension of Time to file this Answer in connection with ongoing proceedings in the bankruptcy proceeding, *In re WorldCom, Inc. et al., Debtors*. BellSouth's motion sought relief from the automatic stay to ensure that BellSouth did not lose its rights to a setoff, and sought the ability to file certain counterclaims or setoff claims in this docket. BellSouth has resolved this issue by stipulation with WorldCom, Inc. and its affiliates, which includes Brooks Fiber (hereinafter collectively referred to as "MCI"). The Honorable Arthur J. Gonzalez approved this stipulation on April 1, 2003. *In re WorldCom, Inc. et al., Debtors,* Stipulation and Order Resolving BellSouth Telecommunication's Motion for Relief from the Automatic Stay and Other Relief ("Bankruptcy Order"), Chapter 11 Case No. 02-13533 (AJG), April 1, 2003. Thus, this Answer is timely filed within two weeks of the Bankruptcy Order, consistent with BellSouth's Unopposed Motion for Extension of Time, which was filed on February 28, 2003.

Hon. Sara Kyle, Chairman April 15, 2003 Page 2

BellSouth will not be filing counterclaims or claims for setoff in this Tennessee docket. Instead, BellSouth's rights to a setoff, and the forum in which such rights will be decided, will be determined at a later date. Also, MCI has agreed not to execute or collect on any portion of any judgment or award entered in its favor in this Tennessee docket for any pre-bankruptcy petition amounts, if any, owed to it by BellSouth until BellSouth's rights to a setoff have been determined by a final order of the Bankruptcy Court.

Finally, as part of the Bankruptcy Order, MCI and BellSouth have agreed to participate in a settlement conference. This settlement conference has been tentatively scheduled for the last week of April. BellSouth anticipates that the claims raised by MCI in this docket will be discussed during that conference.

Please let me know if you have any questions about this matter. A copy is being provided to counsel of record for MCI.

Very truly yours,

Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re:

MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. Complaint Against BellSouth for Overcharging for High Capacity Circuits

Docket No. 03-00145

ANSWER OF BELLSOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth") respectfully responds to the Complaint filed by MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. (collectively "MCI"). MCI's claim that the charges imposed by BellSouth for services and facilities ordered by MCI constitutes a breach of the parties' interconnection agreements is erroneous. BellSouth has charged MCI appropriate rates and accordingly, the Authority should deny the relief that MCI seeks.

BellSouth responds to the specific allegations in the Complaint as follows:

- BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 1 of the Complaint; BellSouth admits the remaining allegations in Paragraph 1.
- 2. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 2 of the Complaint; BellSouth admits the remaining allegations in Paragraph 2.

- 3. BellSouth admits the allegations contained in Paragraph 3 of the Complaint.
- 4. BellSouth admits that the Authority has jurisdiction generally to interpret and enforce interconnection agreements, but denies that MCI has stated a claim under these statutes and orders upon which relief can be granted by the Authority. BellSouth denies the remaining allegations in Paragraph 4.
- 5. BellSouth admits the allegations contained in Paragraph 5 of the Complaint, except to the extent that such allegations refer to Brooks Fiber of Mississippi, Inc. BellSouth affirmatively states that the 1996 agreement referenced relates to Brooks Fiber of Tennessee, Inc.
- 6. BellSouth admits the allegations contained in the first sentence of Paragraph 6 of the Complaint. BellSouth admits that the 1997 Agreement had a term of three years; however, BellSouth denies the allegations contained in the second sentence of Paragraph 6 of the Complaint and affirmatively states that subsequent interconnection agreements between the parties became retroactive to the expiration of the 1997 Agreement.
- 7. BellSouth admits the allegations contained in Paragraph 7 of the Complaint.
- BellSouth admits that MCImetro and Brooks Fiber executed follow-on interconnection agreements; BellSouth affirmatively states that such agreements become retroactive and effective as of May 30, 2000.

BellSouth admits the allegations contained in the third sentence of Paragraph 8 of the Complaint. BellSouth denies any remaining allegations in Paragraph 8 and affirmatively asserts that the parties' interconnection agreements speak for themselves.

- 9. The provision in the interconnection agreement referenced in Paragraph 9 of the Complaint speaks for itself, and no further response from BellSouth is required. BellSouth admits that on or about April 12, 2002, MCI sent a notice of discrepancy, the terms of which speak for themselves.
- 10. The provision in the interconnection agreement referenced in Paragraph 10 of the Complaint speaks for itself, and no further response from BellSouth is required. BellSouth admits the remaining allegations contained in Paragraph 10.
- 11. The provision in the interconnection agreement referenced in Paragraph 11 of the Complaint speaks for itself, and no further response from BellSouth is required. BellSouth admits the remaining allegations contained in Paragraph 11.
- 12. BellSouth admits that the parties met on June 14, 2002 to discuss the issues raised in the Complaint. BellSouth denies the remaining allegations contained in Paragraph 12 of the Complaint.
- 13. The provision in the interconnection agreement referenced in Paragraph 13 of the Complaint speaks for itself, and no further response from BellSouth is required. BellSouth states that MCI

purported to escalate this dispute to the third level of management and that this dispute was not resolved. BellSouth affirmatively states that on or about July 26, 2002 BellSouth provided MCI with its third level management contact; however MCI never contacted BellSouth's management contact nor did MCI schedule a meeting or otherwise respond to BellSouth until the time that this complaint was filed. Any remaining allegations in Paragraph 13 of this Complaint are denied.

- 14. The provision in the interconnection agreement referenced in Paragraph 14 of the Complaint speaks for itself and no further response from BellSouth is required. BellSouth denies the remaining allegations in Paragraph 14. BellSouth affirmatively states that it is willing to discuss with MCI the matters raised in the Complaint.
- 15. BellSouth incorporates its responses to Paragraphs 1 through 14 of the Complaint as if fully set forth herein.
- 16. The Agreements referenced in Paragraph 16 of the Complaint speak for themselves and no further response from BellSouth is required.
- 17. BellSouth admits that DS1 interconnection trunks connect MCI switches to BellSouth central offices for the purpose of exchanging traffic between the parties, and that DS1 interconnection trunks are capable of carrying twenty-four voice grade circuits at one time. BellSouth further admits that MCI has been entitled to obtain DS1 interconnections trunks under the Agreements referenced. BellSouth denies the remaining allegations in Paragraph 17 of the Complaint.

BellSouth affirmatively asserts that it has properly billed MCI switched access rates for DS1 interconnection trunks ordered by MCI because MCI has never furnished BellSouth with any information, such as a Percent Local Facility ("PLF") factor, by which BellSouth could reasonably determine the volume of local traffic, if any, carried over such trunks.

- 18. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint as drafted because the extent to which carriers are entitled to originating or terminating local exchange access charges depends upon the serving arrangement involved.
- 19. The provisions of the interconnection agreements referenced in Paragraph 19 of the Complaint speak for themselves and require no further response from BellSouth. BellSouth denies the remaining allegations contained in Paragraph 19 of the Complaint. BellSouth affirmatively asserts that because the parties' interconnection agreements permit interconnection trunks to carry local, intraLATA, and interLATA traffic, MCI is required to provide BellSouth with sufficient information, such as a Percent Local Facility ("PLF") factor, so that the appropriate billing rates can be applied, which MCI has failed to do.
- 20. BellSouth affirmatively asserts that because the parties' interconnection agreements permit interconnection trunks to carry

local, intraLATA, and interLATA traffic, MCI is required to provide BellSouth with sufficient information, such as a Percent Local Facility ("PLF") factor, so that the appropriate billing rates can be applied, which MCI has failed to do. BellSouth also states that MCI has provided BellSouth with information indicating the DS1 interconnection facilities carries interstate traffic, to which access rates apply. BellSouth denies the remaining allegations in Paragraph 20 of the Complaint.

- 21. BellSouth denies that it has breached the interconnection agreements and denies that MCI has been required to pay substantially higher prices for DS1 interconnection trunks than MCI is obligated to pay. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21 of the Complaint.
- 22. BellSouth denies that MCI overpaid for DS1 interconnection trunks and therefore denies that BellSouth should be ordered to refund any amount to MCI. BellSouth affirmative states that it is and has been willing to cooperatively address this matter with MCI. BellSouth denies the remaining allegations contained in Paragraph 22 of the Complaint.
- 23. BellSouth incorporates its responses to Paragraphs 1-22 of the Complaint as if fully set forth herein.

- 24. The provisions of the interconnection agreements referenced in Paragraph 24 of the Complaint speak for themselves and require no further response from BellSouth. BellSouth admits the remaining allegations contained in Paragraph 24 of the Complaint.
- 25. BellSouth is without knowledge or information sufficient to form a belief as to truth of the allegations in the first sentence of Paragraph 25 of the Complaint. BellSouth denies the remaining allegations in Paragraph 25. BellSouth affirmatively asserts that it has billed MCI at the proper rates for the special access services MCI has ordered.
- 26. BellSouth denies that it has breached the interconnection agreements and denies that MCI has been required to pay substantially higher prices for DS3 transport facilities than MCI is obligated to pay. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 26 of the Complaint.
- 27. BellSouth denies that MCI overpaid for DS3 transport facilities and therefore denies that BellSouth should be ordered to refund any amount to MCI. BellSouth denies the remaining allegations contained in Paragraph 27 of the Complaint.
- 28. BellSouth incorporates its responses to Paragraphs 1-27 as if fully set forth herein.

- 29. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint.
- 30. The Settlement Agreement referenced in Paragraph 30, speaks for itself. BellSouth affirmatively asserts that, consistent with the Settlement Agreement, the rates, terms, and conditions relating to the provisioning and pricing of DS1 combinations are governed by the terms of the current interconnection agreements (which agreements were retroactive to May 30, 2000) between the parties.
- 31. BellSouth admits that MCI has ordered DS1 combinations via an Access Service Request ("ASR") and continues to do so today, even though BellSouth has established an electronic ordering process for DS1 combinations via a Local Service Request ("LSR"). BellSouth also admits that MCI has properly been billed special access rates. BellSouth denies the remaining allegations in Paragraph 31 of the Complaint.
- 32. BellSouth admits that MCI has been billed special access rates for special access services ordered by MCI. BellSouth denies that it has breached the interconnection agreements, denies that it breached the Settlement Agreement, denies that it breached any Authority orders, and denies that MCI has been required to pay substantially higher prices for DS1 combinations than MCI is obligated to pay. BellSouth is without knowledge or information sufficient to form a belief as to

- the truth of the remaining allegations in Paragraph 32 of the Complaint.
- 33. BellSouth denies that MCI overpaid for DS1 combinations and therefore denies that BellSouth should be ordered to refund any amount to MCI. BellSouth denies the remaining allegations contained in Paragraph 33 of the Complaint.
- 34. Any allegations not expressly admitted are hereby denied.
- 35. BellSouth asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

36. The current Interconnection Agreement between BellSouth and MCI contains a dispute resolution procedure, with which MCI has failed to comply. Thus, MCI's claims are barred for MCI's failure to exhaust its administrative remedies.

SECOND AFFIRMATIVE DEFENSE

37. BellSouth provided various discounts associated with the special access services purchased by MCI to which MCI would not be entitled if the Authority grants the relief requested by MCI. BellSouth is entitled to set off the entire sum of these discounts against any award MCI may receive.

WHEREFORE, BellSouth prays that, after due proceedings, there be judgment herein in its favor and against MCI as follows:

- (1) Denying the relief requested by MCI in the Complaint; and
- (2) For all other relief deemed appropriate under the law.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By:_

Guy M. Hicks Joelle J. Phillips 333 Commerce Street, Suite 2101 Nashville, TN 372013300 615/214-6301

R. Douglas Lackey Meredith Mays 675 W. Peachtree St., NE, Suite 4300 Atlanta, GA 30375

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

| [] | Hand Mail Facsimile Overnight | |
|----|--|--|
| [] | Hand Mail Facsimile | |
| | Overnight | |

Jon E. Hastings, Esquire Boult, Cummings, et al. P. O. Box 198062 Nashville, TN 37219-8062

Dee O'Rourke, Esquire MCI WorldCom, Inc. Six Concourse Pkwy, #3200 Atlanta, GA 30328

